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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 13

THE UNITED STATES OF AMERICA, *Petitioner,*

v.

ASHBY OLIVER STEWART, *Respondent.*

PETITION FOR REHEARING

W. GLENN HARMON,
ERNEST L. WILKINSON,
JOHN W. CRAGUN,
J. EDWARD JOHNSON,
Counsel for Respondent.

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OCTOBER TERM, 1940

No. 13

THE UNITED STATES OF AMERICA, *Petitioner,*

v.

ASHBY OLIVER STEWART, *Respondent.*

PETITION FOR REHEARING

Respondent respectfully petitions for a rehearing of the above cause, in which the opinion was delivered by Mr. Justice Douglas on November 12, 1940. As grounds therefor we desire to call the Court's attention to certain misconceptions of fact on the part of the Court which, if corrected, we believe ought to change the result. In addition, it is believed there has been a departure from well settled principles of law. We feel it our duty to point these things out so there will be no mistake in the Court's own mind as to the effect of the descision.

1. In ruling that respondent was not aided by administrative construction, the Court stated that the memorandum of the General Counsel of the Bureau of Internal Revenue was unpublished. (Op. p. 4.) This is incorrect. The opinion was

published by the Secretary of the Federal Farm Loan Board (also an arm of the Treasury Department, see *infra*), who addressed a letter to all joint stock land banks, citing and quoting the ruling of the General Counsel, R. 93-95.

Nor is it correct that the *Des Moines* opinion is "not precisely in point." There is no distinction whatever in any statute relating to this matter between a bank's own bonds and any other Federal farm loan bonds. *United States* v. *Kirby Lumber Co.*, 284 U. S. 1, is still the law. The precise words of the statute here relied upon were construed in the *Des Moines* opinion by the administrative officials charged with enforcement of the act, and construed as to the identical type of gain here involved. Furthermore, that ruling was applied (R. 95-96, 100-101) to dealings in bonds of other banks.

Nor is the Court correct in its statement that no "established" administrative practice is shown. We do not rely merely on the opinion of the General Counsel in the *Des Moines* case, which (aside from the circulars, see *infra*) is the only instance of administrative construction referred to by the Court. Pursuant to the *Des Moines* ruling, an established and consistent course of administrative practice is shown in the fact that in excess of $100,000,000 profits on bonds by joint stock land banks (both of their own issue and those of other banks) have been held exempt to the banks. (R. 100-1.) The record itself shows statutory closing agreements with seven banks so profiting, under which it was agreed that no taxes were due. (Ex. 8, R. 99-100.) Furthermore, since 1913 the government has consistently exempted from taxation all capital gains made by Federal reserve banks, under a statute containing a like exemption with respect to "income derived therefrom." Indeed, the language of the Federal Reserve Act was the source for the language of Sec. 26. See Respondent's Brief, p. 24.

The record contains no administrative ruling at variance with this practice of the department, except the ruling of the General Counsel in this precise case, which was an informal memorandum never published in any respect. Certainly the holding in this case should not be relied upon to disprove a uniform and consistent administrative practice.

2. The statement of the Court (Op. p. 8) that there was no authority in the Farm Loan Board to make representations that the capital gains were or were not tax exempt [since] that administrative function resided only in the Treasury is incorrect both as respects administrative construction and estoppel. The Farm Loan Board, at the time these circulars were issued, was a part of the Treasury Department, and the Secretary of the Treasury was himself a member of the Board, also its *ex officio* chairman:

> "Sec. 3. That there shall be established at the seat of government *in the Department of the Treasury* a bureau charged with the execution of this Act and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board.
>
> "Said Federal Farm Loan Board shall consist of five members, *including the Secretary of the Treasury, who shall be a member and chairman ex officio,* and four members to be appointed by the President of the United States, by and with the advice and consent of the Senate . . ." C. 245, 39 Stat. 360, Sec. 3, Appendix to Resp. Brf., p. 1.

The various circulars disclose on their face that they were issued by the Treasury Department. See, e. g., Exhibit 1 (R. 64); Exhibit 2 (R. 67); Exhibit 4 (R. 72); Exhibit 5 (R. 75). They were issued under specific mandate of statute (Sec. 3 Farm Loan Act, C. 245, 39 Stat. 360, 361, 362; See App. to Resp. Brief p. 2). And the circular letter addressed to all joint stock land banks, advising them of the ruling of the General Counsel that capital gains were exempt, bore the imprint of the Treasury

Department. Ex. 7 (R. 94). The prominence of the printing showing that these various circulars originated in the Treasury Department is far more apparent in the original exhibits than as printed in the record — which, however, is sufficiently clear to disclose the Court's erroneous assumption that the Treasury was not responsible for the representations. Moreover, by statute the Secretary of the Treasury was himself made responsible for the wording, form, printing and custody of the bonds. (Secs. 20, 21, F. L. A., C. 245, 39 Stat. 360, 377-378.) The statement on taxation contained in the bonds was among the statements relied on by respondent. (R. 63-4.) From all of these circumstances it is apparent that the Treasury was not only directly responsible for what was done but that it acted under explicit statutory authority.

The Court observes as defeating estoppel (bottom of p. 7) that "those statements [representations of the Farm Loan Board] are hardly more specific than the statute itself." This conclusion of the Court does not comport with the finding that "In making these purchases respondent relied upon statements contained in circulars and bulletins by the Farm Loan Board, *reasonably believing* that he was purchasing securities the profit upon which in case of sale would be exempt income." This statement of the Court stems directly from a finding (R. 42-3) concurred in by the Circuit Court of Appeals (R. 129). This finding is not open to challenge under the two-court rule *United States* v. *Commercial Credit Co.*, 286 U. S. 63, 67; *Texas & New Orleans R. Co.* v. *Brotherhood*, 281 U. S. 548, 558. It has not been challenged by petitioner here nor in the court below. *Olson* v. *United States*, 292 U. S. 246, 262. This being true, it is not here open to challenge that respondent's reliance on the representations of the circulars was *reasonably* induced; and since the authority for those representations cannot be questioned, this Court must, if it gives the finding the weight to which it is entitled, rule against the Government.

3. While we wish to avoid renewing in this petition matters already argued in the brief, it seems proper to meet those reasons given by the Court which advance new ideas for holding against the exemptions which respondent claims:

(a) The Court rules that "Analytically, income derived from mere ownership of the bonds is clearly different from income derived from dealings or transactions in the bonds." (Op. 2). This resort to analytical construction of the words used instead of considering them in their usual and well understood meaning departs from customary and settled principles of statutory construction. The Court itself acknowledges that Congress is presumed to have used words in their usual and well settled meaning and that the meaning of each phrase must be considered as of the time and circumstance of its use. (Op. p. 2). These principles, enunciated clearly in *Eisner* v. *Macomber,* 252 U. S. 189, 206-7, where the definition of "income" for the purpose of "its meaning in the [16th] Amendment" was considered, were aptly reviewed in *Merchants Loan & Trust Co.,* v. *Smietanka,* 255 U. S. 509, 519:

> "In determining the definition of the word 'income' . . . this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved, in the definition quoted, what it is believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the 16th Amendment to the Constitution."

There can be no question but that the meaning of the phrase "income derived therefrom" as used by Congress in 1916 was the historical meaning attributed thereto by the *Smietanka* and the *Macomber* cases, which was in substance again affirmed in *MacLaughlin* v. *Alliance Insurance Co.,* 286 U. S. 244, 249-50. The problem in the *Smietanka* case involved the identical type of profit here involved; that case held implicitly as well as expressly that such a profit was income derived from the property

dealt in, and that the dealing was important only as segregating the income from the capital which produced it and thus simply marked the incidence of the tax. The effect of the instant decision if allowed to stand is to unsettle this, together with the long and distinguished line of authorities supporting it.

(b) Even in applying an analytical construction of Section 26, there is apparent on the face of the opinion a mistake in the Court's reasoning. The very statement that "Analytically, income derived from mere ownership of the bonds is clearly different from income derived from dealings or transactions in the bonds" recognizes the inescapable fact that *both* types of income had their primary source *in the bonds.* The mistake of the Court lies in assuming that Section 26 reads "income derived from *ownership* of the bonds." Congress did not say "income derived from *ownership* of the bonds" should be exempt, just as it did not say "income derived from *dealings or transactions in* the bonds" should be exempt. What Congress did say was that "income derived *from the bonds*" should be exempt. This is language of inclusion, not exclusion. How can it correctly be asserted that Congress eliminated either of these two types when its language clearly encompassed both? And this is aside from the point that even if the statute did read "income derived from ownership of the bonds," it is doubtful if such language would exempt only interest; first, because if Congress had desired to exempt interest only, it well knew how to employ language perfectly clear; and second, because one of the principal attributes of ownership is the right of alienation with all the benefits flowing therefrom, *cf. Graves* v. *Elliott,* 307 U. S. 383, 386, and a tax upon the result of alienation would therefore be a tax upon ownership.

Examination of the opinion in *Willcuts* v. *Bunn* demonstrates the present error of the Court. That case simply held (1) that income tax covers gains and profits derived from sales or deal-

ings in property; and (2) that for the purpose of the claimed exemption, income from the bonds is divisible into two types: (a) that from ownership and (b) that from dealings. The words from the *Bunn* case quoted in the present opinion of the Court were directed solely to this classification of income from the bonds. If we are correct in this analysis, the reasoning of the Court in the instant case becomes inexplicable. For the very authority relied upon as holding that "income from bonds" does not embrace income from sale or surrender of the bonds is the very authority which divides income from bonds into two classes; one from dealings, and one from ownership.

The words "derived therefrom" which the Court stresses do not alter this analysis. They are simply words of identification without which all income would have been made exempt by the statute. They do not exclude capital gains simply because there had to be dealings in the bonds in order to realize them.

(c) If no ambiguity exists in a statute there is no room for construction. *United States* v. *Missouri Pacific Railroad Co.*, 278 U. S. 269, 277; *Hamilton* v. *Rathbone*, 175 U. S. 414, 419, 420; *Michigan* v. *Michigan Trust Co.*, 286 U. S. 340, 343. See also 25 R. C. L. 959 and long list of cases cited. Where the meaning is clear courts are not permitted to search for a meaning beyond the statute itself. *Caminetti* v. *United States*, 242 U. S. 470, 491. This rule applies not only to tax acts, *Helvering* v. *City Bank Farmers Trust Co.*, 296 U. S. 85, 89, but even to penal and other statutes calling for strict construction, *O. S. C. Line* v. *United States*, 300 U. S. 98, 101, for "if the language is clear it is conclusive," *United States* v. *Hartwell*, 6 Wall 395, 396.

As pointed out, supra, words are to be given their usual meaning. In view of the Federal Reserve Act of 1913, from which the language in Section 26 was taken, and in view of the judicial definition of the phrase in *Eisner* v. *Macomber*, supra, and *Merchants Loan & Trust Co.*, v. *Smietanka*, supra, there could have

been no doubt in 1916 as to the meaning of the phrase here involved. The *Bunn* case, decided in 1931, could not possibly have created such a doubt as to its meaning in 1916.

This being true, there was no occasion for the Court to go outside Section 26, and invoke the principle of *pari materia* in construing the statute. *Barnes* v. *Railroad Companies,* 17 Wall 294, 302. Rules of interpretation are for the purpose of resolving, not creating an ambiguity. *Caminetti* v. *United States,* supra, *MacKenzie* v. *Hare,* 239 U. S. 299. In line with the above authority it has been specifically ruled that the doctrine of construing together statutes in *pari materia* (itself only one of a number of canons of construction) has no application where the words of the statute under consideration are so plain as to not admit of construction. *Barnes* v. *Railroad Companies,* supra; *Greenport Basin & Construction Co.* v. *United States,* 260 U. S. 512.

Moreover, the statement of the Court (Op. p. 3) that the revenue acts are in *pari materia* with Section 26 of the Farm Loan Act is true only to the limit and extent that both deal with a tax exemption in respect to interest on farm loan bonds. The revenue acts, however, do not purport to deal with the entire tax exemption accorded by Section 26. The acts are not in *pari materia* as to other matters which are exempted. The revenue acts do not necessarily show an understanding on the part of Congress, (which are shown by the Revenue Act of 1938, Sec. 817) as to the extent of the exemption accorded by Section 26.

It is respectfully urged that the Court has given entirely too much weight to subsequent revenue acts which apparently it has considered as "the legislative setting" of Section 26 (Op. p. 3, 7). The use of the word "interest" in the income tax statute is no more a "legislative setting" for the Farm Loan Act than the use of the word "income" in the Farm Loan Act is a "legislative setting" for the word "interest" in the Income Tax Acts. Indeed, not as much, for the legislative setting which the Court refers

to did not exist at the time of the passage of Section 26. As a matter of fact the legislative setting of Section 26 comprises the dual facts that the words of that section originated in the Federal Reserve Act where they had been given the broad meaning for which we contend, and that Congress, had it chosen to give a narrower exemption had ample precedent in the Federal Reserve Act itself, and in other statutes, which expressly exempted only interest.

(d) In effect, the Court's decision herein is that the Revenue Act of 1916 repeals *pro tanto* the broader exemption contained in Section 26. The result is to overrule the well established principle that a special statute, even though earlier in point of time, controls a general statute. *Rodgers* v. *United States,* 185 U. S. 83, 87-89, *Washington* v. *Miller,* 235 U. S. 422.

The exemptions of Section 24 (a), (b), Revenue Act of 1928, are perfectly clear standing alone. Section 26 of the Farm Loan Act is likewise perfectly clear standing alone. Neither is inconsistent with the other; one simply goes further than the other. The former, a general statute, exempts interest; the latter, the special statute, income. Neither contains words of repeal or interpretation; and since implied repeals are not favored, there is presented a clear case for the application of the fundamental doctrine that the special act will be deemed an exception to and will prevail over the general act. This, however, the Court has failed to do. It has noted what seemed to it an inconsistency between the revenue acts and the Farm Loan Act, calls the former the "setting" of the latter, and proceeds to "analyze" Section 26 based on a statement, not at all in point, from *Willcuts* v. *Bunn.*

CONCLUSION

In conclusion we respectfully ask this Court to reconsider its decision in the above matter. It has, in effect, said that the word "income" has one meaning for taxing statutes but quite another for exemption statutes even though they are framed to meet the very tax asserted. In doing so it is our view that the opinion has disregarded applicable principles of statutory construction upon which the taxpayer—as all persons governed by statute—was entitled to rely. Thus, respondent was entitled in purchasing the bonds confidently to rely upon the meaning of the words "income derived therefrom" as understood at the time the Farm Loan Act was adopted, which is the meaning ascribed to them by this Court in *Merchants' Loan & Trust Co.* v. *Smeitanka,* 255 U. S. 509, 520. We believe the Court is not justified in analyzing these very words in the light of an entirely unrelated later decision. We believe this Court was not entitled in effect to set aside the concurrent finding of both courts below that respondent "reasonably" believed "that he was purchasing securities the profit upon which in case of sale would be exempt income." We think that as the special statute was entirely clear on the subject, the taxpayer was entitled to assume that he would not be controlled by general revenue statutes. We believe that the scrupulous observance of the Government's policy and bargain in these bond issues and the impartial administration of the law should both have forbidden the necessity for bringing this case; but, it having been necessary to bring the case to preserve his rights, respondent feels entitled to rely on this Court for security in the vindication of these principles of law.

Respectfully submitted,

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J. EDWARD JOHNSON,
Counsel for Respondent.

CERTIFICATE OF COUNSEL UNDER RULE 33

The foregoing petition for rehearing is filed in good faith for the reasons therein set forth, and not for the purpose of delay.

W. GLENN HARMON,
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Counsel for Respondent.

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SUPREME COURT OF THE UNITED STATES.

No. 13.—October Term, 1940.

The United States of America, Petitioner, *vs.* Ashby Oliver Stewart.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[November 12, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

This case is here on certiorari to resolve a conflict of the decision below (106 F. (2d) 405) with *Stern Brothers & Co.* v. *Commissioner*, 108 F. (2d) 309.

During the year 1930 respondent purchased farm loan bonds issued by joint-stock land banks under the Federal Farm Loan Act of 1916 (39 Stat. 360). The purchases were made for the prospective increment to the bonds and not for their interest. At the time the purchases were made the banks were in receivership. The bonds were acquired at prices substantially below par. In making these purchases respondent relied upon statements contained in circulars and bulletins issued by the Farm Loan Board, reasonably believing that he was purchasing securities the profit upon which in case of sale would be exempt income. A part of the bonds so purchased, with their appurtenant coupons, was sold in 1931; and a part was surrendered in that year to the receiver of the issuing bank in exchange for cash paid to respondent "under and pursuant to the covenants contained" in the bonds. Each of these transactions resulted in a profit to respondent.[1] The Commissioner held that those gains were taxable income. Consequently respondent included them in his income tax return for the year 1931 and claimed a refund. On disallowance of that claim, this suit for refund was instituted. The District Court determined that the gains so realized were income and taxable. 24 F. Supp. 145. The Circuit Court of Appeals reversed.

Sec. 22(a) of the Revenue Act of 1928 (45 Stat. 791) includes in gross income "gains, profits, and income derived from • • •

[1] These purchases were for respondent and his wife who filed separate returns for the year in question.

sales, or dealings in property, whether real or personal." Sec. 22(b)(4) exempts from taxation "Interest upon * * * securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended."

If those two sections are controlling, it is clear that respondent is taxable on these gains, for they fall squarely within the definition of gross income contained in § 22(a) and they are not "interest"[2] within the meaning of § 22(b)(4). But respondent places his main reliance on § 26 of the Federal Farm Loan Act which provides that "farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation." It is urged that the gains here involved were "income derived" from the bonds within the meaning of that section.

We disagree with that conclusion. It is our view that under § 26 respondent is entitled to an exemption only for interest on the bonds.

To be sure, "income" is a generic term amply broad to include capital gains for purposes of the income tax. *Merchants' Loan & Trust Co.* v. *Smietanka,* 255 U. S. 509. It is likewise true that Congress will be presumed to have used a word in its usual and well-settled sense. *Old Colony Railroad Co.* v. *Commissioner,* 284 U. S. 552; *Deputy* v. *du Pont,* 308 U. S. 488. But § 26 does not exempt simply "income"; it exempts the bonds and the "income derived therefrom." Analytically, income derived from mere ownership of the bonds is clearly different from income derived from dealings or transactions in the bonds. As stated in *Willcuts* v. *Bunn,* 282 U. S. 216, 227-228:

"The tax upon interest is levied upon the return which comes to the owner of the security according to the provisions of the obligation and without any further transaction on his part. The tax falls upon the owner by virtue of the mere fact of ownership, regardless of use or disposition of the security. The tax upon profits made upon purchases and sales is an excise upon the result of the combination of several factors, including capital investment and, quite gen-

[2] The record does not show what portion, if any, of the sums received on the sale or on the exchange of the bonds and appurtenant coupons was received as payment on accrued interest. Nor did the complaint allege that any portion of the sums received was exempt because it was "interest" on the bonds. Hence that point was not raised below or here.

erally, some measure of sagacity; the gain may be regarded as 'the creation of capital, industry and skill.' *Tax Commissioner* v. *Putnam*, 227 Mass. 522, 531."

True, the *Bunn* case dealt only with the alleged constitutional inhibition against taxation of capital gains on municipal bonds and not with a specific statutory exemption. But its analysis is cognate here as indicating that, in absence of clear countervailing evidence, an exemption of "income derived" from a security does not embrace "income derived" from transactions in that security.

There are no circumstances here which should make the reasoning of the *Bunn* case inapplicable.

The Revenue Act of 1916 (39 Stat. 756) was enacted shortly after the Farm Loan Act by the same Congress and at the same session.[3] Sec. 2 of that Act, like § 22(a) of the 1928 Act, included in taxable income "gains, profits, and income derived from * * * sales, or dealings in property." And § 4 of that Act, like § 22(b)(4) of the 1928 Act, exempted from taxation "interest upon * * * securities issued under the provisions of the Federal farm loan Act." It is clear that "all acts *in pari materia* are to be taken together, as if they were one law." *United States* v. *Freeman*, 3 How. 556, 564. That these two acts are *in pari materia* is plain. Both deal with precisely the same subject matter, *viz.*, the scope of the tax exemption afforded farm loan bonds. The later act can therefore be regarded as a legislative interpretation of the earlier act (*Cope* v. *Cope*, 137 U. S. 682, 688; Cf. *Stockdale* v. *Insurance Companies*, 20 Wall. 323, 331-332) in the sense that it aids in ascertaining the meaning of the words as used in their contemporary setting.[4] It is therefore entitled to great weight in resolving any ambiguities and doubts. Cf. *United States* v. *Stafoff*, 260 U. S. 477, 480. In that view the express exemption of interest alone makes tolerably clear that capital gains are not exempt.

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[3] The Farm Loan Act became law on July 17, 1916, the Revenue Act of 1916 on September 8, 1916.

[4] It should be noted in this connection that the exemption of "interest" contained in § 4 of the 1916 Act was continued in each subsequent Revenue Act until 1934. Sec. 213(b)(4), Revenue Act of 1918 (40 Stat. 1057, 1065); § 213(b)(4), Revenue Act of 1921 (42 Stat. 227, 238); § 213(b)(4), Revenue Act of 1924 (43 Stat. 253, 268); § 213(b)(4), Revenue Act of 1926 (44 Stat. 9, 24); § 22(b)(4), Revenue Act of 1928 (45 Stat. 791, 798; § 22(b)(4), Revenue Act of 1932 (47 Stat. 169, 178). By § 22(b)(4) of the Revenue Act of 1934 (48 Stat. 680, 687) the exemption was generalized so as to include interest on obligations of any federal corporation which is an instrumentality of the United States, subject to the limitation that interest is exempt only if and to the extent provided for in the acts of Congress authorizing the issuance

In support of the contrary view great stress is placed on the legislative history of § 26. Extensive references are made to the hearings on this bill and to the debates in Congress. Typical are the statements or criticisms that the bill gave "these investments a distinct advantage over other investments",[5] that the exemption provision was important,[6] that maintenance of a market for the bonds was desirable,[7] that the exemption was too broad.[8] These comments, however, are inconclusive. They are not sufficiently discriminating in their analysis or criticism to throw light on the narrow issue involved here.

Respondent's resort to administrative interpretation of § 26 is equally unproductive. No established administrative practice is shown. The holding of the unpublished memorandum[9] of the General Counsel of the Bureau of Internal Revenue relied upon is not precisely in point, even were we to assume that it is entitled to authoritative weight.[10] It merely ruled that a joint-stock land bank was not taxable on gains from purchases of its own bonds. And when the question of the taxability of an individual on his capital

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of such obligations. The Senate Committee (S. Rep. No. 558, 73d Cong., 2d Sess., pp. 23-24; Internal Rev. Bull., Cum. Bull. 1939-1, Part 2, p. 604) made the following comment on that change:

"This is merely a clarifying change made by the House. Under the language of this section, as contained in existing law, interest on securities issued under the Federal Farm Loan Act, or such Act as amended, is expressly excluded from gross income and thereby made exempt from the income tax. Other Acts have been enacted which also exempt the interest on obligations issued thereunder from tax. In order to bring the section into accord with the Acts authorizing such exemptions and to avoid the necessity of referring to all such Acts, a general provision has been inserted by the House excluding from gross income the interest upon the obligations of a corporation organized under Act of Congress if such corporation is an instrumentality of the United States; subject to the limitation, however, that the interest is exempt only to the extent provided for in the Acts of Congress authorizing the issuance of such obligations."

5 Cong. Record, 64th Cong., 1st Sess., Vol. 53, Part 8, p. 7312. And see H. Rep. No. 630, 64th Cong., 1st Sess, p 8.

6 Joint Hearings before Sub-Committees of the Committees on Banking and Currency, Rural Credits, 63d Cong., 2d Sess., pp. 95-97; S. Doc. No. 380, 63d Cong., 2d Sess., Agricultural Credit, Rep. U. S. Commission, pp. 17, 33.

7 H. Doc. No. 679, 63d Cong., 2d Sess., pp. 15, 16.

8 Cong. Record, *op. cit., supra*, note 5, pp. 6850, 7311. Nor is it significant that substitute bills were offered (Cong. Record, *op. cit., supra*, note 5, pp. 7385, 7387; S. 4061, 63d Cong., 2d Sess.) by the terms of which "interest" was exempted. These were overall substitutes. Therefore the implication is not warranted that the failure of their adoption was due to the desire of Congress to grant a broader exemption than "interest".

9 This is reproduced, so far as material here, in S. Hearings, Committee on Finance, 75th Cong., 3d Sess., H. R. 9682, Part 4, pp. 619-621.

10 See Helvering *v.* New York Trust Co., 292 U. S. 455, 468.

gains from sales of these bonds was raised less than two years later, another such ruling was issued to the effect that he did not have the benefit of any exemption.[11]

Nor is respondent materially aided by the change in § 26 made by § 817 of the Revenue Act of 1938 (52 Stat. 447, 578). That amendment provides that "all income, except interest, derived" from such bonds shall be included in gross income.[12] It is urged that this amendment is affirmative recognition by the Congress that § 26 exempts these capital gains. But here again the legislative record is ambiguous and hence inconclusive. The purpose of § 817, as originally introduced, clearly was to make certain that capital gains realized by joint-stock land banks on transactions in their own obligations would not be exempt.[13] The section was amended on the floor of the Senate to its present form on the suggestion that "per-

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[11] See Agricultural Securities Corp. *v.* Commissioner, 39 B. T. A. 1103, 1111.

[12] This amendment is prospective only. It provides:

"Notwithstanding the provisions of section 26 of the Federal Farm Loan Act, as amended, in the case of mortgages made or obligations issued by any joint-stock land bank after the date of the enactment of this Act, all income, except interest, derived therefrom shall be included in gross income and shall not be exempt from Federal income taxation."

[13] S. Rep. No. 1567, 75th Cong., 3d Sess., p. 47. This report clearly indicates that the Committee was of the view that under § 26 joint-stock land banks were exempt from capital gains resulting from purchases of their own obligations. A change in that regard was clearly intended, for the Committee said, p. 47:

"This section subjects to Federal income taxation the capital gain realized by a joint-stock land bank on the purchase of its own obligations or of mortgages made by it. It has been brought to the attention of the committee that these banks have been purchasing their own bonds at below par and issuing new bonds at or above par. Gain realized on such a purchase is, under the law, taxable income and in the case of an ordinary corporation, is taxed. Under the Federal Farm Loan Act, however, which governs the taxability of obligations of joint-stock land banks, such income is exempt. The committee is of the opinion that such income ought to be taxed."

The Committee draft of § 817 (then § 816) provided for that change as follows (H. R. 9682, 75th Cong., 3d Sess.):

"Notwithstanding the provisions of section 26 of the Federal Farm Loan Act, as amended, gain realized on the acquisition by a joint-stock land bank of obligations issued by it or mortgages made by it, if such obligations or mortgages are made or issued after the date of the enactment of this Act, shall not be exempt from Federal income taxation."

As indicated, *supra*, note 9, the unpublished memorandum of the General Counsel of the Bureau of Internal Revenue ruling that a joint-stock land bank was not taxable on gains from purchases of its own bonds was before the Senate Committee. Cf. the recommendation made to the Committee, S. Hearings, *op. cit., supra*, note 9, pp. 614, 615.

haps the language is not as broad as it should be."[14] The purpose of the amendment may well have been to clarify the doubtful and uncertain status of capital gains which were not covered by the Committee's recommendation. There is no clear and convincing evidence that it was designed to change existing law, so far as these other categories of capital gains were concerned. But even if a contrary implication were to be assumed, it would not override so belatedly the clear inference, based on a long series of revenue acts exempting only interest, that capital gains were taxable.

Respondent further argues that comparison of other exemption statutes with the language of § 26 reinforces the view that these capital gains are exempt. In that connection our attention is called to numerous statutes—some exempting only bonds[15] and others exempting principal and interest;[16] some exempting a corporation, "including the capital stock and surplus therein, and the income derived therefrom,"[17] and others[18] containing somewhat similar exemptions for the corporation but only an exemption as to principal and interest for its bonds; and still others[19] containing the same kind of exemption as § 26 of the Farm Loan Act. From this painstaking review respondent argues that where Congress has de-

14 Statement by Senator King, member of the Committee on Finance, Cong. Record, Vol. 83, 75th Cong., 3d Sess., p. 4959. When Senator King offered the amendment, he gave the following explanation (*id.* p. 5174):

"The bill as reported subjected to Federal income taxation capital gains realized by a joint-stock land bank on obligations issued and mortgages made by it after the date of enactment of the act. The effect of the amendment is not only to tax that gain but also to tax gain realized by another joint-stock land bank or by an individual or corporation which itself is not exempt from Federal taxation. Thus, gain on a sale of such a joint-stock land bank bond by an investor is subject to tax. The amendment continues the present provision of law under which interest on such bonds and mortgages is exempt from Federal taxation."

15 Statutes governing Panama Canal Toll Bonds (32 Stat. 481, 484; 36 Stat. 11, 117) and Postal Savings Bonds (36 Stat. 814, 817) are cited.

16 Reference is made to various statutes including those pertaining to Treasury notes (38 Stat. 251, 269) and several of the Liberty loans (40 Stat. 35; 40 Stat. 288, 291; 40 Stat. 1309, 1310).

17 Federal Reserve Act of December 23, 1913 (38 Stat. 251, 258). And see Bankhead-Jones Farm Tenant Act of July 22, 1937 (50 Stat. 522, 528); Agricultural Adjustment Act of 1938 (52 Stat. 31, 75).

18 Reference is made to the War Finance Corporation Act of April 5, 1938 (40 Stat. 506, 511); Reconstruction Finance Corporation Act of January 22, 1932 (47 Stat. 5, 9); Home Owners' Loan Act of June 13, 1933 (48 Stat. 128, 130).

19 Federal Farm Mortgage Corporation Act of January 31, 1934 (48 Stat. 344, 347); Commodity Credit Corporation Act of March 8, 1938 (52 Stat. 107, 108).

sired to exempt only "interest" it has said so and where it has intended to grant a broader exemption it has used the word "income"; that statutes exempting only "interest" have a narrower meaning than those exempting "income"; and that this long and recurrent legislative practice discloses a clear design on the part of Congress to draw distinctions and to shape the various exemptions to suit its differing policy in divers situations.

Suggestive as this analysis is, it is entitled to little weight. No mere collation of other statutes can be decisive in determining what the instant statute means. The meaning of each phrase must be closely related to the time and circumstance of its use. The phrase "income derived therefrom" as used in § 26 clearly has taken on coloration from the express exemption for nearly a quarter century of only interest on these bonds. We have no occasion to intimate an opinion as to the meaning of other similar statutes. It is sufficient here to note that in another legislative setting "income derived" from bonds may or may not be synonymous with "interest" on bonds. That must necessarily be dependent on a host of factors which only a minute scrutiny of the particular legislative scheme would reveal. For this reason the fact that the same Congress which in 1938 amended § 26 granted an exemption to another federal instrumentality[20] couched in the identical language of the original § 26 is merely a straw in the wind. So far as the instant bonds are concerned, that in itself is entitled to little weight as against the long standing express exemption in successive revenue acts of interest alone.

Respondent also stresses the fact that circulars, prepared and distributed by the Farm Loan Board "advising investors of the merits and advantages of farm loan bonds",[21] stated that these bonds and their income were "free from all forms of taxation" including the income tax, that "this exemption is complete", etc. As we have said, it was found that respondent relied upon such statements reasonably believing that capital gains would not be taxable. But aside from the fact that those statements are hardly more specific than the statute itself, they cannot be accorded the

[20] Commodity Credit Corporation, *supra*, note 19.

[21] Pursuant to the authority vested in the Federal Farm Loan Board by § 3 of the Act.

weight of uniform and long standing administrative treatment.[22] There was no authority for the Board to make representations that capital gains were or were not tax exempt. That administrative function resided only in the Treasury. An officer or agency of the United States to whom no administrative authority has been delegated cannot estop the United States even by an affirmative undertaking to waive or surrender a public right. *Utah* v. *United States,* 284 U. S. 534, 545-546; *Wilber National Bank* v. *United States,* 294 U. S. 120, 123-124.

We return to our conclusion that the weight of these various considerations leans to the view that only interest is exempt. The cumulative strength of the several factors urged by respondent is not such clear evidence of Congressional purpose as to make inapposite the application of the reasoning of *Willcuts* v. *Bunn, supra,* to this situation. In that posture of the case, respondent has succeeded only in casting some doubt on the proper construction of the statute. Yet those who seek an exemption from a tax must rest it on more than a doubt or ambiguity. *Bank of Commerce* v. *Tennessee,* 161 U. S. 134, 146; 163 U. S. 416, 423. Exemptions from taxation cannot rest upon mere implications. *United States Trust Co.* v. *Helvering,* 307 U. S. 57, 60. As stated by Mr. Justice Cardozo in *Trotter* v. *Tennessee,* 290 U. S. 354, 356, "Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced." And see *Pacific Co., Ltd.* v. *Johnson,* 285 U. S. 480, 491. Hence broad, generalized statutory exemptions have frequently been construed narrowly and confined to those situations where the subject matter of the exemption was directly, not indirectly or remotely, involved. *Murdock* v. *Ward,* 178 U. S. 139; *Hale* v. *State Board of Assessment and Review,* 302 U. S. 95; *United States Trust Co.* v. *Helvering, supra.* The exemption contained in § 26 of the Farm Loan Act must be so construed.

For these reasons the challenged judgment must be

Reversed.

Mr. Justice ROBERTS is of opinion that the judgment should be affirmed on the grounds stated by the Circuit Court of Appeals in its opinion below, 106 F. (2d) 405.

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[22] Nor can the casual statement by the Secretary of the Treasury, in the course of a Congressional hearing on the Revenue Act of 1918, to the effect that "Land bank bonds carry a wider exemption than Liberty bonds." (S. Hearings, H. R. 12863, 65th Cong., 3d Sess., Part 4, p. 117) carry authoritative weight, as it does not even purport to be a discriminating analysis of this problem in its various aspects.